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5 UNITED STATES DISTRICT COURT  
6 WESTERN DISTRICT OF WASHINGTON  
7 AT SEATTLE

8 LAURA M.,

9 Plaintiff,

10 v.

11 COMMISSIONER OF SOCIAL SECURITY,

12 Defendant.

CASE NO. C19-1008-BAT

**ORDER REVERSING AND  
REMANDING FOR FURTHER  
ADMINISTRATIVE PROCEEDINGS**

13 Plaintiff Laura M. seeks review of the denial of her application for Supplemental Security  
14 Income and Disability Insurance Benefits. She contends the ALJ erred in rejecting her testimony  
15 and evaluating the medical opinions, and erroneously failed to reconcile a conflict between his  
16 finding that plaintiff could perform medium work and a subsequent finding that she was limited  
17 to light work. Dkt. 11. The Court **REVERSES** the Commissioner's final decision and  
18 **REMANDS** the matter for further administrative proceedings under sentence four of 42 U.S.C. §  
19 405(g).

20 **BACKGROUND**

21 Plaintiff applied for benefits on August 27, 2012, alleging disability as of May 2006. Tr.  
22 247. An ALJ issued a decision denying her claims in October 2014, and the Appeals Council  
23 denied review of that decision. Tr. 1, 16-33. Plaintiff appealed this denial, and in January 2017,

1 this Court, in a decision by David A. Christel, United States Magistrate Judge, reversed and  
2 remanded the case for further administrative proceedings. Tr. 830-43. On remand, the ALJ  
3 issued a decision in April 2019 finding plaintiff not disabled during the relevant period. Tr. 689-  
4 703. Plaintiff now seeks review of the April 2019 decision.

5 In addition to the application at issue in this case, plaintiff filed a previous application for  
6 benefits that was denied and became administratively final on July 2, 2009. Tr. 70-71. Plaintiff  
7 also filed a subsequent application for SSI on July 14, 2016. Tr. 846. This subsequent application  
8 was approved, and plaintiff was found disabled as of July 14, 2016. *Id.* Her date last insured for  
9 DIB purposes was December 31, 2011. Tr. 692. Therefore, for purposes of DIB, the relevant  
10 period is from July 3, 2009, the day after the previous denial became final, through December  
11 31, 2011, her date last insured. For purposes of SSI, the relevant period is from August 27, 2012,  
12 the filing date of this application, until July 14, 2016, the date she was found disabled in the  
13 subsequent application.

## 14 DISCUSSION

### 15 A. Plaintiff's allegations

16 Plaintiff argues that the ALJ failed to give valid reasons for discounting her symptom  
17 testimony, and instead improperly relied on the same reasons this court rejected in its previous  
18 decision. Dkt. 11 at 4. Because the ALJ did not find that plaintiff was malingering, the ALJ was  
19 required to provide clear and convincing reasons to reject his testimony. *See Vertigan v. Halter*,  
20 260 F.3d 1044, 1049 (9th Cir. 2001). An ALJ does this by making specific findings supported by  
21 substantial evidence. "General findings are insufficient; rather, the ALJ must identify what  
22 testimony is not credible and what evidence undermines the claimant's complaints." *Lester v.*  
23 *Chater*, 81 F.3d 821, 834 (9th Cir. 1996).

1 The ALJ found that plaintiff's allegations were not entirely consistent with the medical  
2 evidence and other evidence in the record. Tr. 696. The ALJ found that the medical evidence  
3 from the relevant period showed inconsistencies between plaintiff's alleged pain symptoms and  
4 her objective presentation on exam, her complaints of pain were sporadic, and the physical  
5 findings were less than remarkable. Tr. 696-97. Plaintiff argues that the ALJ relied on essentially  
6 the same findings this Court previously rejected and again improperly failed to link the cited  
7 medical records to any specific testimony or statements the ALJ found not credible. Dkt. 11 at 8.  
8 The Court agrees. An ALJ does not provide specific, clear, and convincing reasons for rejecting  
9 a claimant's testimony by simply reciting the medical evidence in support of his or her RFC  
10 finding without specifying which testimony she finds not credible. *Brown-Hunter v. Colvin*, 806  
11 F.3d 487, 489 (9th Cir. 2015). This Court previously found that the ALJ summarized evidence  
12 contained in medical records but did not link the cited medical records to any specific testimony  
13 or statements the ALJ found not credible, and that this failed to meet the standard required to  
14 reject a claimant's testimony. Tr. 834-35. In the decision at hand, the ALJ again summarized the  
15 medical evidence without linking it to any specific testimony or statements or explaining how the  
16 evidence was inconsistent with plaintiff's allegations. This summary again fails as a reason to  
17 discount plaintiff's allegations about her physical limitations.

18 The ALJ also found that the evidence revealed disparities in plaintiff's allegations about  
19 the severity of her mental limitations and that while there were some signs of diminished mental  
20 functioning, they arose in the context of substance use. Tr. 697-99. As with the evidence related  
21 to plaintiff's physical impairments, the ALJ summarized the findings of various mental  
22 examinations but did not link it to any specific testimony or allegations by plaintiff. As this  
23 Court previously found, conflicting or inconsistent reports of substance use can contribute to a

1 decision to discount a claimant's testimony, but they cannot justify discounting the claimant's  
2 allegations without further corroboration or explanation. Tr. 835. The ALJ again failed to explain  
3 how plaintiff statements about her substance use undermined her testimony. This again fails as a  
4 reason to discount plaintiff's allegations.

5       The ALJ also found that plaintiff's activities suggested she was capable of greater mental  
6 functioning than she alleged. Tr. 699. The ALJ points to her ability to complete her activities of  
7 daily living, including attending to personal care and doing her laundry at a women's wellness  
8 center, going to public places such as the Seattle Center and the library, and using the bus if it  
9 was not too crowded. *Id.* Plaintiff argues that the ALJ cited only to evidence from the period  
10 when she was homeless, when she was required to leave the shelter during the day and had to  
11 find places to spend her time until the shelter reopened, and failed to discuss her reports of  
12 decreased functioning once she had her own apartment. Dkt. 12 at 19. An ALJ may consider a  
13 claimant's daily activities when evaluating her credibility. *Light v. Soc. Sec. Admin.*, 119 F.3d  
14 789, 792 (9th Cir. 1997). The ALJ may not penalize a claimant for attempting to live a normal  
15 life in the face of her limitations. *See Cooper v. Bowen*, 815 F.2d 557, 561 (9th Cir. 1987). But  
16 contradictions between a claimant's reported activities and her asserted limitations are an issue  
17 of credibility. *Morgan v. Comm'r of Soc. Sec. Admin.*, 169 F.3d 595, 600 (9th Cir. 1999). Here,  
18 the ALJ identified minimal daily activities that do not rise above attempts to live a normal life  
19 and failed to explain how these activities undermine plaintiff's allegations. This also fails as a  
20 reason to discount plaintiff's testimony.

21       The ALJ failed to correct the errors this Court identified in its previous decision and  
22 again failed to give clear and convincing reasons, supported by substantial evidence, for  
23 discounting plaintiff's testimony.

1           **B.       Medical opinion evidence**

2           Plaintiff argues that the ALJ erred in assessing the medical opinion evidence. Dkt. 11 at  
3 12. In general, the ALJ must give specific and legitimate reasons for rejecting a treating or  
4 examining doctor's opinion that is contradicted by another doctor, and clear and convincing  
5 reasons for rejecting a treating or examining doctor's uncontradicted opinion. *Lester*, 81 F.3d at  
6 830-31.

7           *1.       Dr. Deem and Dr. Liddell*

8           Shirley Deem, M.D., examined plaintiff in November 2016 and opined that she could  
9 stand and sit for at least six hours in an eight-hour day, lift and carry less than 10 pounds, and  
10 had postural and manipulative limitations. Tr. 1249-52. M. Liddell, M.D., examined plaintiff in  
11 November 2016 and opined that plaintiff could perform simple and repetitive tasks, accept  
12 instructions from supervisors, perform work activities on a consistent basis, and maintain regular  
13 attendance in the workplace, but would have limitations in her ability to perform detailed and  
14 complex tasks, interact with coworkers and the public, complete a normal workday or workweek  
15 without interruptions, and manage usual stress encountered in the workplace. Tr. 1257-63. The  
16 ALJ did not discuss these opinions, stating only that he gave no weight to the opinion evidence  
17 from after the subsequent established onset date of July 14, 2016. Tr. 701. Plaintiff argues that  
18 the ALJ's failure to consider these opinions was erroneous because absent any evidence of  
19 change in her condition in the months before these doctors evaluated her, these opinions were  
20 probative of her functioning during the relevant period. Dkt. 11 at 13-14.

21           The Court cannot make a finding in the first instance about how probative these opinions  
22 were of her functioning during the relevant period or how much weight they should be given.  
23 However, the Court concludes that the ALJ erred in in failing to provide a valid rationale for

1 discounting these opinions. As discussed below, the Court is remanding this case for a  
2 reevaluation of the medical and opinion evidence and for the ALJ to determine, based on the  
3 evidence of record, the date plaintiff's impairments worsened to a disabling level. These  
4 opinions are part of the evidence the ALJ must consider in making that determination. The Court  
5 therefore directs the ALJ to evaluate these opinions on remand.

6         2.       *Ms. Marquis*

7         Treating nurse Yvonne Marquis, ARNP, opined in September 2012 that plaintiff was  
8 limited to sedentary work due to sciatica and disc disease. Tr. 597-99. The ALJ gave this opinion  
9 little weight, finding that her contemporaneous examination, which included findings of normal  
10 muscle strength in the lower extremities and normal gait, did not support this severity; the ALJ  
11 also noted that Ms. Marquis estimated such severity for a duration of only 6 months. Tr. 699.

12         A nurse practitioner is not an acceptable medical source who can give a medical opinion.  
13 *See* 20 C.F.R. § 404.1527. The ALJ need give only germane reasons for rejecting a nurse  
14 practitioner's opinion. *See Dodrill v. Shalala*, 12 F.3d 915, 919 (9th Cir. 1993). Plaintiff asserts  
15 that Ms. Marquis, in considering plaintiff's objectively documented disc disease in forming her  
16 opinion, relied on the same findings that ultimately led to the finding that she was limited to light  
17 work and, therefore, disabled. Dkt. 11 at 14. This conclusory assertion, unconnected to any  
18 evidence in the record, is insufficient to establish that the ALJ erred in evaluating Ms. Marquis's  
19 opinion. There is nothing the show that in 2012, Ms. Marquis considered the evidence that was  
20 used established plaintiff's disability as of July 2016. However, because the Court is remanding  
21 for an assessment of when plaintiff's impairments became disabling, the ALJ should consider  
22 whether Ms. Marquis's opinion is probative in establishing an onset date.

1           3.       *Dr. Mitchell and Dr. Dees*

2           Melanie Mitchell, Psy.D., examined plaintiff in September 2012 and opined that she  
3 would have numerous marked and severe impairments in social and cognitive functioning; Dr.  
4 Mitchell assigned a GAF score of 40, indicating some impairment in reality testing or  
5 communication or major impairment in several areas, such as work or school, family relations,  
6 judgment, thinking, or mood. Tr. 572-76; Am. Psychiatric Ass'n, Diagnostic and Statistical  
7 Manual of Mental Disorders (DSM-IV), 34 (4th ed. text rev. 1994). The ALJ gave the opinion  
8 little weight, finding that it was unpersuasive because Dr. Mitchell's ratings and low GAF score  
9 were not entirely supported by her contemporaneous mental status exam, which the ALJ noted  
10 included findings that plaintiff had thought process within normal limits, intact remote memory,  
11 and concentration within normal limits. Tr. 700.

12           Plaintiff argues that the ALJ improperly isolated the findings supporting his conclusion  
13 and did not consider the findings that conflicted with it. Dkt. 11 at 15. The ALJ may not  
14 substitute his own interpretation of the medical evidence for the opinion of a medical  
15 professional. *See Tackett v. Apfel*, 180 F.3d 1094, 1102-03 (9th Cir. 1999). Dr. Mitchell's mental  
16 status exam found numerous deficits that the ALJ failed to discuss, including flat affect,  
17 psychomotor agitation, fearful behavior and tearfulness, inability to perform a 3-step command,  
18 poor judgment, and being overwhelmed by the mental status exam. Tr. 575-76. The ALJ ignored  
19 these findings and relied on his own interpretation of the examination rather than Dr. Mitchell's.  
20 This was not a valid reason to reject the opinion.

21           The ALJ also found that any reliance by Dr. Mitchell on plaintiff's self-reports weakened  
22 the probative value of her opinion because plaintiff was less than candid about her history of  
23 substance use as shown in her reports to other sources. Tr. 700. But an ALJ does not provide

1 adequate reasons for rejecting an examining doctor's opinion by questioning the credibility of  
2 the patient's complaints where the doctor does not discredit those complaints and supports her  
3 ultimate opinion with her own observations. *Edlund v. Massanari*, 253 F.3d 1152, 1159 (9th Cir.  
4 2001). Here, Dr. Mitchell specifically found that there was no evidence of feigning or factitious  
5 behaviors. Tr. 575. And she did not merely repeat plaintiff's complaints, but instead based her  
6 opinion on her clinical observations. This was not a valid reason to discount Dr. Mitchell's  
7 opinion. The ALJ failed to give specific and legitimate reasons for rejecting Dr. Mitchell's  
8 opinion.

9         Wayne Dees, Phy.D., examined plaintiff in January 2013 and opined that she would  
10 likely have difficulty completing complex tasks due to depression, anxiety, and PTSD, and  
11 completing repetitive tasks due to chronic pain; her ability to adapt to changes would likely be  
12 impaired given her mental health issues; she had difficulty communicating with others; and she  
13 would likely have significant difficulty completing a full work week due to her mental health  
14 symptoms, chronic pain, and problematic sleep. Tr. 643. The ALJ gave little weight to this  
15 opinion for similar reasons as he discounted Dr. Mitchell's opinion, namely, that Dr. Dees'  
16 contemporaneous mental status examination notes did not support the severity of his opinion and  
17 plaintiff did not disclose her history of alcohol abuse. Tr. 700. However, as with Dr. Mitchell's  
18 opinion, the ALJ failed to note Dr. Dees' findings that supported his opinion and relied on his  
19 own interpretation rather than Dr. Dees' interpretation, and improperly discounted the opinion  
20 for relying on plaintiff's self-report when Dr. Dees supported the opinion with his own clinical  
21 observations. The ALJ failed to give specific and legitimate reasons for rejecting Dr. Dees'  
22 opinion.



1           4.       *Dr. Rowlett and Dr. Czysz*

2           Treating psychiatrist David Rowlett, M.D., opined in May 2014 that plaintiff would be  
3           unable to successfully interact on a consistent basis with coworkers, supervisors, and the public,  
4           and would be unable to maintain a predictable work schedule. Tr. 679. He opined that she was  
5           able to maintain her current condition by limiting her activities and social interactions, and that  
6           her condition would deteriorate and she would decompensate if exposed to the stress involved in  
7           even the simplest full-time employment. *Id.* Examining psychologist James Czysz, Ph.D., opined  
8           in December 2015 that plaintiff had numerous moderate and marked limitations in areas of  
9           mental functioning. Tr. 1185.

10          The ALJ gave these opinions little weight, finding that the level of severity they indicated  
11          was inconsistent with the record as a whole. Tr. 700-01. The ALJ found that while there were  
12          instances of diminished mental functioning, on many occasions over the course of treatment  
13          plaintiff remained engaged without noted difficulty; she reported to Dr. Rowlett that medication  
14          was just what she needed to function well; and when she presented for care unrelated to her  
15          mental health she remained capable of recounting information and engaging without apparent  
16          cognitive, social, or adaptive difficulty. Tr. 701.

17          Plaintiff argues that the ALJ's finding was based on rejecting the opinions of every  
18          treating and examining source who opined on plaintiff's functioning and, when considering the  
19          treatment notes, cherry-picking those supportive of his conclusions and ignoring those supportive  
20          of Dr. Rowlett's and Dr. Czysz's opinions. Dkt. 11 at 16. The ALJ again failed to discuss the  
21          limitations these doctors opined and instead improperly substituted his own interpretation of the  
22          evidence for theirs. In particular, the ALJ failed to acknowledge Dr. Rowlett's opinion that  
23          plaintiff maintained her current condition by limiting her activities and social interaction and that

1 she would decompensate if she attempted to engage any kind of work. The ALJ failed to explain  
2 how his interpretation of plaintiff's limitations, rather than the doctors' interpretation, was  
3 correct. The ALJ failed to provide specific and legitimate reasons for rejecting Dr. Rowlett's and  
4 Dr. Czysz's opinions.

5 **C. Subsequent finding of disability**

6 Plaintiff argues that the ALJ failed to resolve a conflict between his finding that she was  
7 capable of performing medium work (with additional non-exertional limitations) from July 3,  
8 2009, through July 13, 2016, and the subsequent finding that she was limited to light work (with  
9 non-exertional limitations) as of July 14, 2016. Dkt. 11 at 2.

10 The subsequent finding that plaintiff was limited to light work led to the determination  
11 that plaintiff was disabled under Rule 202.06 of the Medical-Vocational Guidelines (the "grids").  
12 Tr. 823. Grid rule 202.06 directs a finding of disabled when a claimant is limited to light work, is  
13 of advanced age,<sup>1</sup> has at least a high school education but no provision for direct entry into  
14 skilled work, and is skilled or semi-skilled but the skills are not transferrable. 20 C.F.R. Pt. 404,  
15 Subpt. P, App. 2, Rule 202.06. A claimant who can perform medium work but otherwise has the  
16 same characteristics is not disabled under grid rule 203.15. *Id.* Rule 203.15.

17 Plaintiff asserts that while the ALJ acknowledged that plaintiff was found disabled as of  
18 July 14, 2016, he failed to address the conflict between his finding that she could perform  
19 medium work through July 13, 2016, and the subsequent determination that she was limited to  
20 light work as of the following day. Dkt. 11 at 3.

21 The subsequent decision considered only whether plaintiff's impairments were disabling  
22 as of the date of the subsequent application, July 14, 2016; the question of the nature and severity  
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<sup>1</sup> Plaintiff entered the advanced age category when she turned 55 in May 2011.

1 of her impairments before that date were not at issue. The established onset date of July 14,  
2 2016, was based not on medical evidence but instead was based on an administrative rule.

3 In the case at hand, however, the ALJ was required to make a determination based on the  
4 evidence in the record. And although the ALJ acknowledged that plaintiff was found disabled as  
5 of July 14, 2016, the ALJ failed to identify any evidence that showed a change in her functioning  
6 as of that date. It does not appear that the ALJ considered whether, based on the evidence of  
7 record, her impairments reached this level of severity before her subsequent application date.  
8 Under the particular facts of this case, it is unreasonable to assume that plaintiff moved from  
9 being able to perform medium work to being limited to light work on a specific day without  
10 reference to evidence in the record to support that finding. The Court therefore finds that the ALJ  
11 erred by failing to evaluate whether the evidence showed that plaintiff's impairments met the  
12 disabling level of severity before her subsequent application date.

13 Plaintiff asks the Court to remand this case for an award of benefits, arguing that the  
14 evidence gives rise to a suggestion that she was disabled before July 14, 2016. Dkt. 11 at 17.  
15 However, to remand for an award of benefits would require the Court to make factual findings,  
16 which this Court cannot do. It is established that plaintiff was not disabled through July 2, 2009,  
17 the date of the prior decision finding her not disabled, and she became disabled on July 14, 2016,  
18 the date of the subsequent decision. This Court cannot, in the first instance, establish a disability  
19 onset date within that seven-year period.<sup>2</sup> The Court therefore concludes that remand for further  
20 administrative proceedings is the proper remedy in this case. On remand, the ALJ shall evaluate,

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23 <sup>2</sup> Other relevant factors include the fact that plaintiff entered a new age category in May 2011, a  
change that affects the application of the grids; her date last insured for DIB purposes is  
December 31, 2011; and she filed her SSI application on August 27, 2012.

1 based on the evidence in the record and not simply her subsequent application date, the date on  
2 which her impairment worsened to a disabling level under the grids.

3 **CONCLUSION**

4 For the foregoing reasons, the Commissioner's decision is **REVERSED** and this case is  
5 **REMANDED** for further administrative proceedings under sentence four of 42 U.S.C. § 405(g).  
6 On remand, the ALJ shall reevaluate plaintiff's testimony and the medical evidence, including  
7 the opinions of Dr. Deem, Dr. Liddell, Dr. Mitchell, Dr. Dees, Dr. Rowlett, and Dr. Czysz. The  
8 ALJ shall further develop the record and redo the five-step disability evaluation process as  
9 necessary and appropriate to make a new decision, including evaluating whether plaintiff's  
10 impairments were disabling under the grids before July 14, 2016.

11 DATED this 18th day of February, 2020.

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14 BRIAN A. TSUCHIDA  
Chief United States Magistrate Judge